

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF VIRGINIA
Harrisonburg Division

TAMMY JOHNSON,

Plaintiff,

v.

CITY OF STAUNTON SCHOOL
BOARD,

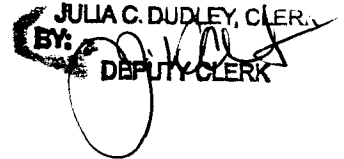
Serve:

Garrett Smith, Ph.D., Superintendent
Staunton City Schools
116 West Beverley Street
Staunton, Virginia 24401

Defendant.

CLERK'S OFFICE U.S. DIST. COURT
AT HARRISONBURG, VA

JUN 20 2019

JULIA C. DUDLEY, CLERK
BY:  DEPUTY CLERK

Civil Action No.: 5:19-CV-00049

COMPLAINT

Plaintiff Tammy Johnson ("Plaintiff"), for her Complaint against Defendant City of Staunton School Board ("Defendant" or "School Board"), states as follows:

1. Plaintiff brings this action to require Defendant to pay back wages owed to her, which Defendant failed to pay in violation the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. 201, *et seq.* ("the FLSA"), and further seeks to recover for a state law contract claim for payment of accrued sick leave. Plaintiff also seeks permanent injunctive relief and damages. Attached as Exhibit 1 is Plaintiff's Consent to Join.

JURISDICTION AND VENUE

2. This Court has original jurisdiction to hear this Complaint and to adjudicate the claims stated herein under 28 U.S.C. § 1331 because these claims are brought under the FLSA, 29 U.S.C. § 201 *et seq.* Supplemental jurisdiction for Plaintiff's contract claim is laid in 28 U.S.C. § 1367.

3. Venue is proper in the Western District of Virginia under 28 U.S.C. § 1391(b)(2) because a substantial part of the events giving rise to this action occurred in this judicial district and division.

PARTIES

4. Plaintiff is a citizen of the United States and resident of Harrisonburg, Virginia. Plaintiff is the former employee of Defendant. Plaintiff began work for Defendant in 2001 and worked for a number of years as transportation supervisor. In June 2013, her position was changed to transportation coordinator which Defendant specifically designated as a non-exempt position for purposes of the FLSA based on her job responsibilities and requirements. Plaintiff served in that capacity as a non-exempt employee until her separation from employment in May 2018 and was entitled to receive overtime pay for all hours worked in excess of 40 hours in a work-week.

5. Defendant is a public agency organized and existing under Virginia law. Defendant has a principal place of business in Staunton, Virginia.

6. At all times hereinafter mentioned, Defendant has employed employees including Plaintiff in and about its places of business in the activities of an enterprise engaged in commerce. Plaintiff was an employee of Defendant within the meaning of the FLSA, 29 U.S.C. § 203(e)(1) and § 203(e)(2)(C).

7. At all times relevant hereto, Defendant was an “employer” within the meaning of 29 U.S.C. § 207(a)(1) and was the “employer” of Plaintiff within the meaning of 29 U.S.C. § 203(d).

8. In her employment with Defendant following her classification as a non-exempt employee, Plaintiff’s principal duties involved no independent discretion or judgment. Plaintiff acted as an assistant to the Director of Operations regarding employees and the City of Staunton Schools transportation system, subject to school board policies, State Department of Education regulations and State laws, including other duties.

9. Plaintiff was subject to no exemption under the FLSA, and was required to be paid for all hours she worked over 40 in a work week at the rate of one and one-half times her regular rate of pay.

10. Plaintiff’s work as non-exempt transportation coordinator began in June 2013.

11. Plaintiff was paid as an hourly employee making the equivalent of \$208.3667 per day, or \$26.05 per hour for an 8 hour day as of her last year in which she worked for Defendant.

12. Plaintiff was the only employee of Defendant stationed at the Defendant’s transportation office. Defendant was aware that Plaintiff worked through her lunch breaks because she was the only one in the office and was required to handle calls to her office. Beginning in June 2013, Defendant’s payroll system began automatically deducting the one-half hour for lunch breaks from Plaintiff’s time records. This

amounted, in almost every week, to a 2.5 hour deduction of time per week for time which Plaintiff actually worked on behalf of Defendant.

13. Plaintiff worked for Defendant from 2003 until early June 2018. Plaintiff had been notified in April 2018 that her employment contract would not be renewed for the coming year. Plaintiff went on approved FMLA leave for a period of time in April and May 2018. Plaintiff gave her notice of resignation in May 2018.

14. From June 2013, and up to approximately April, 2018 when she went on approved FMLA leave, Plaintiff worked in excess of 40 hours per week and was not, in any of these work weeks, compensated for all of her time exceeding 40 hours per week. During that period of time, Plaintiff worked an average of approximately 2.5 hours per week of time for which she obtained no compensation, much less overtime compensation, for the illegally deducted lunch breaks.

15. In addition to working through lunch breaks, Plaintiff was required to be on call after she had clocked out of work. Plaintiff regularly conducted work for Defendant during such on-call hours, which were either after normal working hours, while on vacation or taking personal leave time, or on the weekends.

16. Plaintiff worked an average of approximately 28 to 30 hours every month during the period beginning June 2013 and continuing through approximately mid-April, 2018 for which she was not compensated in any manner.

17. At all times relevant herein, Plaintiff did not perform as a primary duty final managerial decision-making over other employees. Plaintiff did participate in interviews and handled employee complaints, but all final approvals and decision-making were required to go through Plaintiff's then supervisor, Earl McCray.

18. At all times relevant herein, Plaintiff's job duties did not meet the criteria for any exemption to the overtime compensation requirements of the FLSA.

19. The transportation coordinator position was not required to have a Bachelors or Masters degree.

20. Plaintiff was being required to perform work off the clock, and to work overtime hours in excess of 40 in virtually all weeks she worked since the date on which she was made a non-exempt employee without compensation for such hours she was suffered to work by Defendant.

21. Defendant intended to deprive Plaintiff pay for the time she worked off the clock, or overtime pay for time worked in excess of 40 hours per week for such off the clock work, or acted with reckless disregard for Plaintiff's rights under the FLSA.

22. At all times relevant herein, the Plaintiff was subject to pay policies whereby Plaintiff was suffered or permitted to work hours for which no compensation was provided, and in excess of 40 hours per week without receiving full overtime compensation for all such hours worked.

COUNT I

Violation of the Fair Labor Standards Act

23. Plaintiff incorporates by reference the allegations asserted above.

24. During all times relevant to this case, Plaintiff was employed by Defendant in a non-exempt position as an employee.

25. The FLSA requires employers to pay employees for all hours worked. The FLSA requires employers to pay employees one and one-half times the regular rate of pay for all hours worked over forty hours per workweek.

26. Defendant has failed and refused to pay Plaintiff her hourly wage compensation as required by law and in accordance with the FLSA.

27. Defendant's violation of the FLSA was and is willful.

28. As a result of Defendant's violations of the FLSA, Plaintiff has suffered damages by being denied overtime wages for all her hours worked in accordance with §207 of the FLSA.

29. Defendant has not made good faith efforts to comply with the FLSA with respect to its compensation of Plaintiff.

30. Defendant's actions, policies, and/or practices described above violate the FLSA's requirements by regularly and repeatedly failing to compensate Plaintiff for time spent on work activities as described in this Complaint.

31. Defendant knew or showed reckless disregard for the fact that it failed to pay Plaintiff for all hours worked per week and for overtime hours worked.

32. As a result of Defendant's unlawful acts, Plaintiff has been deprived of overtime compensation in amounts to be determined at trial, and Plaintiff is entitled to recovery of such amounts, liquidated damages, prejudgment interest, attorneys' fees, costs, and other compensation pursuant to § 216(b) of the FLSA.

COUNT II

Breach of Contract – Accumulated Sick Pay

33. Plaintiff incorporates by reference the allegations set forth above.

34. Defendant maintained policies providing for the accumulation of sick pay to its employees, including Plaintiff. The accumulation of sick leave for the Plaintiff was unlimited pursuant to Defendant's policy, and by the end of Plaintiff's employment, she

had accumulated approximately 1,000 hours of sick leave that was available to her and which had been unused.

35. Defendant's policies provide that "(a)ccumulated vacation days and sick leave amounts individually or combined that total \$15,000 or greater will be deferred pre-tax into the 403b plan."

36. This policy applied to Plaintiff. Given the amount of accumulated vacation pay due to Plaintiff as of the date her employment was terminated, as well as the amount of accumulated sick leave pay, all of her accumulated sick leave pay should have been deferred into her 403b plan.

37. Despite the policy relating to accumulated sick leave, Defendant has failed and refused to pay Plaintiff her accumulated sick leave, or to pay such amounts into her 403b plan, in breach of its policies.

38. As a result of Defendants' refusal to pay Plaintiff for her accumulated sick leave, including making payments into her 403b account, Plaintiff has been damaged.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, Tammy Johnson, by counsel, requests that this Court award judgment against the Defendant, as follows:

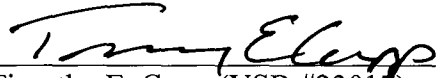
- A. Enter judgment declaring that the acts and practices complained of herein are violations and willful violations of the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.*;
- B. Enter judgment awarding Plaintiff actual and compensatory damages in the amount found to be due for unpaid overtime compensation and other

compensation due under the FLSA, together with pre-judgment interest, against the Defendant;

- C. Enter judgment awarding Plaintiff an equal amount (inclusive of unpaid overtime for all hours worked) in statutorily-allowed liquidated damages for willful violations of the FLSA;
- D. Enter judgment awarding Plaintiff her accumulated sick leave to which she is due;
- E. Enter judgment awarding Plaintiff reasonable prejudgment interest, attorneys' fees, and costs of this suit under the FLSA claim; and
- F. Grant such other and further relief as this Court deems necessary and proper.

PLAINTIFF DEMANDS A TRIAL BY JURY.

TAMMY JOHNSON
By Counsel



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